



The Comptroller General  
of the United States

Washington, D.C. 20548

Arsenoff

## Decision

Matter of: Labco Construction, Inc.  
File: B-230798  
Date: July 18, 1988

### DIGEST

1. Notwithstanding the agency's failure to update a solicitation notice to reflect the most current statutory cost limitation, General Accounting Office has no objection to a proposed award to the low bidder whose bid, while not conforming to the limitation notice in the solicitation, did not exceed the actual cost statutory limitation.
2. Protester, who objects to the application of a revised statutory cost limitation which was not incorporated into the solicitation, has made no showing that it would have bid differently had the revised limitation been incorporated.

### DECISION

Labco Construction, Inc., protests the proposed award to Jordan Construction, Inc., under invitation for bids (IFB) No. F34650-87-B-0604, issued by the United States Air Force for improvements to various family housing units at Tinker Air Force Base (Tinker AFB), Oklahoma. The protester, who was the second low bidder, alleges that Jordan's bid was nonresponsive and must be rejected. We deny the protest.

The IFB was issued on November 4, 1987. Bidders were required to submit prices for eight "base items" representing basic improvements to 6 different types of family housing units and for 14 "additive items" representing additional work to be performed on those units. The project was subject to an overall ceiling of \$2,152,000 on available funds. The IFB also contained a notice advising bidders that each housing unit was subject to a statutory cost limitation of \$24,330 and that bids exceeding this limit may be rejected. Award was to be made to the low aggregate bid which, while conforming to the statutory cost limitation for each unit and remaining within the overall funding ceiling, offered the most additive items; this was to be determined by considering the bids on the additive items in the stated

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order of priority until the overall ceiling was reached, skipping only those items causing all bidders to exceed the ceiling.

On December 4, Congress raised the applicable statutory cost limitation from \$30,000 per unit to \$40,000 per unit. 10 U.S.C.A. § 2825(b)(1) (West Supp. 1988). Taking into account certain required adjustments<sup>1/</sup>, this change had the effect of raising the net cost limitation applicable to procurements at Tinker AFB to \$32,448 per unit. The IFB was not amended to reflect the change.

Bids were opened on February 8, 1988. Two of the bids received were rejected because their base prices exceeded the overall ceiling on available funds. This left only the bids of Labco and Jordan for further consideration. Labco's bid for all the base items was \$2,132,800; Jordan's was \$1,946,000. When the additive items were included, Jordan's overall price within the ceiling was \$2,149,900 while its highest per unit price, which was for Type III housing became \$24,320. Jordan's overall bid price became \$1,985,900 and therefore lower than the protester's aggregate price for the base items and the applicable additive and below the ceiling on available funds; but its highest unit price became \$26,700 for Type III housing, which was higher than Labco's. Thus its bid failed to conform to the statutory cost limitation contained in the IFB notice.

On March 9, the Civil Engineering Squadron at Tinker AFB informed the contracting officer of the recent statutory change and stated that, under the new limit of \$32,448 per unit, Jordan was now in line for award. On the same day he received notification of the new cost limit, the contracting officer notified Labco of his intention to award to Jordan on the basis of the revised limit. Labco protested that decision to this Office on March 21. No award has been made under the IFB.

In essence, Labco alleges that, because Jordan's bid for Type III housing did not strictly conform to the stated net cost limitation of \$24,330, it was nonresponsive and had to be rejected. Further, the protester submits that the agency's proposed substitution of the new statutory cost limitation without prior notice is inconsistent with the competitive bidding system.

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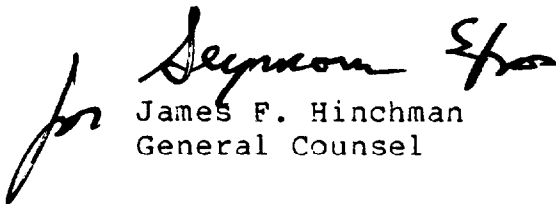
<sup>1/</sup> These adjustments are described in Federal Acquisition Regulation (FAR) § 36.205(a)(2) and were also made to the cost limitation included in the solicitation.

In response, the Air Force basically argues that its decision to award a contract to Jordan complies with the statutory cost limitation as amended.

While it is unfortunate that the agency failed to conform the solicitation notice to the most current statutory cost limitation, it is our view that the statutes establishing cost limitations for military housing units are primarily directed towards the contracting agencies rather than to private firms competing on contracts to build those units. See 48 Comp. Gen. 34 (1968). Thus, in determining whether an award based on an overall low bid is proper, we will look to whether that low bid actually exceeds the applicable statutory limitation; if it does not, the award is proper. Since the agency's proposed award to Jordan will not exceed the limitation contained in the statute as amended, we do not object to it.

Moreover, Labco has made no showing that it would have bid differently had the current statutory cost limitation been incorporated into the solicitation.

The protest is denied.

for  
James F. Hinchman  
General Counsel